HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

Writ Petition No. 10481 of 1997

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Between:

D. Sudarshana Chary

…Petitioner

And

The Depot Manager,

APSRTC, Kukatpally Depot & another.

...Respondents.

:: O R D E R ::

Counsel for the petitioner : Sri S.Ashok Anand Kumar

Counsel for the respondents : Sri V.T.M. Prasad

4th April, 2007

This is a petition for quashing award dated 8-6-1995 vide

which Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad (hereinafter described as 'the Tribunal') rejected the petitioner's claim for reinstatement.

The Facts:

While he was working as Conductor at Kukatpalli Depot of the Andhra Pradesh State Road Transport Corporation (for short, 'the Corporation'), Sri M. Pratap, Assistant Depot Clerk made complaint dated 3-5-1991 against the petitioner and another Conductor namely, Sri K. Prakash that they were defrauding the Corporation by issuing fake passes to the passengers. Assistant Manager (Traffic), who conducted preliminary enquiry, submitted report dated 6-5-1991 with the finding that the allegation contained in the complaint was prima facie correct. Immediately thereafter, the petitioner was placed under suspension and a regular departmental enquiry was initiated against him under

the Andhra Pradesh State Road Transport Corporation Employees (Classification, Control and Appeal) Regulations, 1967 (for short, 'the 1967 Regulations') on the charges of having acted in violation of

Clause 28(iii) of the Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations, 1963 (for short, 'the 1963 Regulations'). On receipt of the charge sheet, the petitioner made an application for supply of copy of the complaint and the report of preliminary enquiry, but his request does not appear to have been accepted. The Enquiry Officer submitted report with the finding that the charges levelled against the petitioner are proved. Respondent No.1 accepted the enquiry report and passed order dated 26-3-1992 whereby the petitioner was removed from service. The appeal and review filed by the petitioner were dismissed by Divisional Manager and Regional Manger respectively, vide their orders dated 22-6-1992

and 5-7-1994.

The petitioner challenged his removal from service by filing an application under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short, 'the Act'), which was registered as I.D.No.88 of 1994. He not only questioned the validity of the enquiry, but also the findings recorded by the Enquiry Officer. He pleaded that the enquiry was not held in consonance with the 1967 Regulations and that he was not given effective opportunity of defence. On merits, he pleaded that the findings recorded by the Enquiry Officer were based on pure conjectures and that he could not have been held guilty of the charge of issuing fake bus passes because the duty to issue passes was of Sri K. Prakash. In the counter filed on behalf of respondent No.1, it was pleaded that the petitioner had been punished after holding an enquiry in accordance with the 1967 Regulations and there was no violation of the rules of natural justice.

By an order dated 4-4-1995, the Tribunal decided the issue of fairness of enquiry against the petitioner. The Tribunal then examined the record of the enquiry and confirmed the order of punishment. Paragraphs 11 to 16 of the award passed by the Tribunal read as under:

> "11. It is proved by the material on record that an amount of Rs.110/- was collected from 4 pass holders and that they were given the used bus passes by erasing the entries with regard to the identity card number and the previous pass number. These used bus passes were issued to Smt. Laxmi and Sri D.Venkatarama Reddy on 4-4-1991, to Sri M. Raja Reddy on 6-4-1991 and to Sri Babu Reddy on 7-4-1991. The serial numbers found on the bus passes produced by them for renewal were physically verified with reference to the way bill register. It was found they were already issued on 1-9-1990, 8-9-1991 and 5-9-1991. There is no doubt that the entries in the used bus

passes were erased and the entries convenient to them are made and issued to those unsuspecting pass holders. The conductors were supposed to check them when these pass holders travel in the bus on these passes, but did not check them. It is only Sri M. Pratap, the Assistant Depot Clerk in the first instance and the Depot Clerk subsequently checked the passes produced by the pass holders for renewal and found out the forgery.

12. The main point to be decided is whether the petitioner was responsible for this forgery and issuance of four bus passes collecting the fare and misappropriating the same. The allegation is that the petitioner in collusion with another conductor by name Sri K.Prakash committed all these misconducts. Though Regulation 11-3 of APSRTC (Classification, Control and Appeal) Regulations, 1967 empowers the Depot Manager to order a single enquiry against Mr. Prakash and the petitioner, the Depot Manager ordered for a separate enquiry and removed both of them from service by separate orders. The Industrial Dispute raised by Mr. K. Prakash (I.D. 23/93) was disposed of on 10-2-1992 by this court whereby the order of removal was confirmed. All the records like the tampered bus passes, the statements given by Mr. Raja Reddy, Smt. Lakshmi, Babu Reddy and Venkataram Reddy, the complaints given by A.D.C. and the statements given by several witnesses including the petitioner and K. Prakash during the preliminary enquiry were filed in the said case. The management did not ask for sending for the records from the said case and exhibiting them in this case. The management also did not try to file certified copies of the said documents in this case. So, we have to decide the dispute with the material available on record.

13. We have the report Ex.M-1 of the Assistant Manager (Traffic) in which he extracted the statements of Sri M. Pratap, Sri N. Raja Reddy, the petitioner and Sri K. Prakash and Md. Moinuddin, the Depot Clerk. In the said report, we find that Sri Raja Reddy has stated that the petitioner took his identity card, the expired bus pass and Rs.110/- and handed over to K. Prakash at about 12.30 p.m.

and Prakash handed over the renewed bus passes after 20 minutes. The petitioner was also said to have admitted in his statement that he took Rs.110/- from Raja Reddy and handed over the money and papers to K. Prakash, who in his turn, handed over the four bus pass tickets to Raja Reddy. Mr. K. Prakash stated that he has spare bus passes and he issued the same. The punch marks on the passes issued by Prakash discloses that it was once issued in February, 1991 and again issued in April, 1991.

14. The petitioner did not give any explanation to the charge sheet. When Mr. Moinuddin, the Depot Clerk deposed that the used bus passes were again re-issued in April, 1991 they tallied with the standard stamp used in Kukatpalli bus pass counter, the petitioner did not cross examine him. Similarly, when Mr. Pratap, A.D.C. deposed that after eliciting the facts from Raja Reddy, he questioned the petitioner about his conduct in issuing the fake bus passes in collusion with K. Prakash, the petitioner admitted his mistake in re-issuing the bus passes with the help of K. Prakash, the petitioner did not cross examine Mr. Pratap. Sri P. Ramanjaneyulu, the Asst. Manager (Traffic) deposed to himself verifying the other bus passes produced by the passholders, but that used bus passes were issued to Lakshmi, Babu Reddy and Venkatarama Reddy. It was only elicited by the petitioner from him that after receiving the complaints from Pratap, he inspected the bus passes produced on 6-5-1991 and detected some more cases of issuing the used passes to Lakshmi, Babu Reddy and Venkatarama Reddy.

15. The version of the petitioner in his evidence Ex.M-12 is a simple denial. He only states that he does not know anything about issuing these used bus passes, that he was busy with issuing “Travel as you like” tickets, and that he has only seen the passengers like Raja Reddy talking with K. Prakash. He denies to have collected Rs.110/- from each of the passengers. But his earlier admissions were there.

16. I have no hesitation to come to the conclusion that the petitioner and K. Perakash who was actually conducting the buses at that time have colluded together and re-issued

> the used bus passes to the unsuspecting pass holders by tampering with the passes and that too when Mr. Pratap, the A.D.C. who has to issue the renewal passes in the current month, was away from his counter during his lunch hour. These two persons have cheated the corporation which is giving food and shelter to them. They do not deserve any mercy even under Section 11-A of the I.D. Act."

Sri S. Ashok Anand Kumar argued that the enquiry held against the petitioner is liable to be declared nullity and the impugned award is liable to be quashed because the petitioner was not given reasonable opportunity of defence. Learned counsel emphasized that non-supply of the copy of complaint and report of preliminary enquiry deprived the petitioner of his right to effectively cross examine the witnesses produced during the enquiry and this fatal flaw in the proceedings of enquiry has been completely overlooked by the Tribunal. Learned counsel then argued that the issue of passes to the passengers was not a part of the petitioner's duty and, therefore, he could not be held responsible for issuing fake passes and removed from service on the basis of findings recorded by the enquiry officer. Lastly, he invoked Section 11-A of the Act and argued that the Tribunal committed a jurisdictional error by upholding the punishment of removal despite the fact that the findings recorded by the enquiry officer were not based on any legally admissible evidence.

Sri V.T.M. Prasad, learned counsel for respondent No.1 supported the impugned award and argued that the petitioner does not have the locus to question the proceedings of enquiry and the enquiry report on the ground of violation of the rules of natural justice because he has not challenged order dated 4-4-1995. Sri Prasad further argued that the findings recorded by the enquiry officer are

based on proper appreciation of evidence and the Tribunal did not commit any error by refusing to nullify the order of punishment.

I have thoughtfully considered the entire matter. At the outset, I consider it proper to mention that the petitioner has not challenged order dated 4-4-1995 passed by the Tribunal, whereby the issue of fairness was decided against him. Therefore, the argument of Sri S. Ashok Anand Kumar that the enquiry held against the petitioner was not fair cannot be entertained. In my considered view, by omitting to challenge the order passed by the Tribunal on the fairness of the enquiry, the petitioner will be deemed to have waived his right to question the proceedings of enquiry and the enquiry report on the ground of violation of the rules of natural justice.

I shall now consider whether the impugned award is vitiated by any jurisdictional infirmity or error of law apparent on the face of the record. The parameters for exercise of the High Court's power to issue a writ of certiorari are well defined. Such writ, order or direction can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals or quasi-judicial authorities. A writ can also be issued where in exercise of jurisdiction conferred on it, the Court or the Tribunal or quasi-judicial authority acts illegally or improperly, i.e., it decides a question without giving an opportunity of hearing to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of certiorari is supervisory in nature and not appellate one. This necessarily means that the finding of fact reached by the inferior Court, Tribunal, etc., as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on

the face of the record. An error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or quasi-judicial authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of certiorari. A finding of fact recorded by an inferior Court or Tribunal or quasi-judicial authority can be corrected only if it is shown that in recording the said finding, the Court etc., had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as error of law which can be corrected by issuing a writ of certiorari. However, sufficiency or adequacy of the evidence relied upon by the inferior Court or Tribunal or quasi-judicial authority cannot be gone into by the High Court while considering the prayer for issue of a writ of certiorari. Likewise, mere possibility of forming a different opinion on re-appreciation of evidence produced by the parties is not sufficient for issue of a writ of certiorari - **Syed Yakoob v. K.S. Radhakrishnan and others**[1] **Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others**[2] **R.S. Saini v. State of Punjab and others**[3] and **Surya Dev Rai v. Ram Chander Rai**[4]**.**

I may now notice some decisions, which have bearing on the High Court's power to interfere with the disciplinary proceedings and the order of punishment. In State of **Orissa v. Bidyabhushan Mohapatra**[5], the Supreme Court considered whether the High

Court can interfere with the order of punishment simply because finding recorded by the enquiry officer in respect of some charges is found to be vitiated by an error of law and whether it can go into the sufficiency and adequacy of punishment. While reversing the order of Orissa High Court, which had allowed the writ petition filed by the respondent, their Lordships of the Supreme Court observed:

> "But the Court in a case in which an order of dismissal of a public servant is impugned is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an inquiry consistent with the prescribed rules, are not justiciable: nor is the penalty open to review by the Court. If the High Court is satisfied that if some but not all of the findings of the Tribunal were 'unassailable', the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed, was final, and the High Court had no jurisdiction to direct the Governor to review the penalty for as we have already observed the order of dismissal passed by a competent authority on a public servant, if the conditions of the constitutional protection have been complied with, is not justiciable. Therefore if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the inquiry officer or the Tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice."

In **State of A.P. v. Sree Rama Rao**[6], the Supreme Court indirectly reiterated the proposition laid down in **Bidyabhushan**

Mohapatra (supra) and held:

> "The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental inquiry against a public servant; it is concerned to determine whether the inquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the inquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of inquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the inquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding ... under Article 226 of the Constitution."

In **Rly. Board v. Niranjan Singh**[7], the principle laid down in Bidyabhushan Mohapatra[5] (supra) was reiterated. In State of Madras v. G. Sundaram[8] the Constitution Bench of the Supreme Court laid down the following proposition:

> "High Court, in the exercise of its jurisdiction under Article 226 of the Constitution, cannot sit in appeal over the findings of fact recorded by a competent Tribunal in a properly conducted departmental enquiry except when it be shown that the impugned findings were not supported by any evidence. It cannot consider adequacy of that evidence to sustain the charge."

In **State of A.P. v. C. Venkata Rao**[9], a three Judges Bench of the Supreme Court referred to the judgments of Syed Yakoob[1] (supra), Bidyabhushan Mohapatra[5] (supra), Niranjan Singh[7] (supra) and observed:

> "In considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court need not be applied. Even if that rule is not applied by a domestic tribunal in any inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and

material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal."

In **B.C. Chaturvedi v. Union of India**[10], the Supreme Court, while considering the appellant's challenge to the order of punishment passed as a sequel to the departmental enquiry held against him, highlighted the limited scope of judicial review by making the following observations:

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own

independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case.

In **Apparel Export Promotion Council v. A.K. Chopra**[11], the Supreme Court again considered the High Court's power to interfere with the disciplinary proceedings and held:

"It is a settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on *no evidence* or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty.

Further, it is a well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is *not* concerned with the *correctness* of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process.

Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority."

Section 11-A of the Act on which reliance has been placed by Shri S. Ashok Anand Kumar has become subject matter of consideration in several cases. I n **Engineering Laghu Udyog Employees Union v. Judge, Labour Court and Industrial Tribunal**[12], a three Judges Bench of the Supreme Court referred to various judicial precedents including the often-quoted judgment in **Workmen v. Fire Stone Tyre and Rubber Company**[13] and held:

"Section 11-A of the Industrial Disputes Act, 1947 (for short "the Act") confers a wide power upon the Labour Court, Tribunal or the National Tribunal to give appropriate relief in case of discharge or dismissal of workman. While adjudicating on a reference made to it, the Labour Court, Tribunal or the National Tribunal, as the case may be, if

satisfied that the order of discharge or dismissal was not justified, may, while setting aside the same, direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. Thus, only in a case where the satisfaction is reached by the Labour Court or the Tribunal, as the case may be, that an order of dismissal was not justified, the same can be set aside."

In **Mahindra and Mahindra v. N.D., Narawade**[14], the Supreme Court held as under:

"After introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the work concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of the Supreme Court and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being so disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot be way of sympathy alone exercise the power under Section 11-A and reduce the punishment."

In **M.P. Electricity Board v. Jagdish Chandra Sharma**[15], the Supreme Court interpreted Section 107-A of the Madhya Pradesh Industrial Relations Act, 1960, which is pari materia to Section 11-A

of the Act, and held:

> "The scope of Section 107-A of the Madhya Pradesh Industrial Relations Act, 1960 is the same as that of Section 11-A of the Industrial Disputes Act, 1947. The jurisdiction under Section 107-A of the Act to interfere with punishment when it is a discharge or dismissal can be exercised by the Labour Court only when it is satisfied that the discharge or dismissal is not justified. The Tribunal or the Labour Court cannot interfere with the quantum of punishment based on irrational or extraneous factors and certainly not on what it considers a compassionate ground. The jurisdiction vested with the Labour Court to interfere with punishment is not to be exercised capriciously and arbitrarily. It is necessary, in a case where the Labour Court finds the charge proved, for a conclusion to be arrived at that the punishment was shockingly disproportionate to the nature of the charge found proved, before it can interfere to reduce the punishment. When charges proved are grave vis-à-vis the establishment, interference with punishment of dismissal cannot be justified. Similarly, the High Court gets jurisdiction to interfere with the punishment in exercise of its jurisdiction under Article 226 f the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charge proved."

In **Hombe Gowda Educational Trust v. State of Karnataka**[16], the Supreme Court interpreted Section 8 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 and held:

> "The Tribunal's jurisdiction under Section 8 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 is akin to one under Section 11-A of the Industrial Disputes Act, 1947. While exercising such discretionary jurisdiction, no doubt it is open to the Tribunal to substitute one punishment by another; but it is also trite that the Tribunal exercises a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment

could be exercised only when, inter alia, it is found to be grossly disproportionate. Such interference at the hands of the Tribunal should be inter alia on arriving at a finding that no reasonable person could inflict such punishment. The Tribunal may furthermore exercise its jurisdiction when relevant facts are not taken into consideration by the management which would have direct bearing on the question of quantum of punishment."

In **South Indian Cashew Factories Workers' Union v. Kerala State Cashew Development Corporation**[17], the Supreme Court reiterated that in exercise of power under Section 11-A, the Tribunal cannot sit in appeal over the findings recorded in the disciplinary proceedings and held:

> "If the enquiry is fair and proper then in the absence of any allegations of victimisation or unfair labour practice the Labour Court has no power to interfere with the punishment imposed. Section 11-A of the Industrial Disputes Act, 1947 gives ample power to the Labour Court to reappraise the evidence adduced in the enquiry and also sit in appeal over the decision of the employer in imposing punishment. But, that section is applicable only in the case of dismissal or discharge of a workman. Since section 11-A was not applicable, the Labour Court had no power to reappraise the evidence to find out whether the findings of the enquiry officer were correct or not whether the punishment imposed was adequate or not."

Reverting to the case in hand, I find that it is neither the pleaded case of the petitioner nor Shri Ashok Anand Kumar argued that the Tribunal did not have the jurisdiction, power or authority to adjudicate the dispute raised by his client. Therefore, the award of the Tribunal cannot be quashed on the ground of lack or excess of jurisdiction.

The evidence produced in the course of enquiry revealed that

Rs.210/- were collected from four pass holders and they were given used bus passes by erasing the entries relating to identity card number and the previous pass number. These passes were issued to Smt. Lakshmi, Sri D. Venkatarama Reddy, Sri N. Raja Reddy and Sri Babu Reddy. The Assistant Manager (Traffic), who made the preliminary enquiry, recorded the statement of M. Pratap, N. Raja Reddy, the petitioner, Sri K. Prakash and Sri Mohammed Moinuddin i.e. Depot Clerk. Sri Mohammed Moinuddin, Depot Clerk appeared during the enquiry and deposed that used bus passes were re-issued in April, 1991. Sri M. Pratap, Assistant Depot Clerk deposed that after eliciting the facts from Raja Reddy, he questioned the petitioner about his conduct in issuing the fake bus passes in collusion with Shri K. Prakash and he admitted the same. The petitioner did not cross-examine Sri M. Pratap or Sri P. Ramanjaneyulu, Assistant Manager (Traffic). All this has been considered by the Tribunal for refusing to interfere with the findings recorded by the Enquiry Officer, and I do not see any reason to take a different view more so because the order of punishment passed against the petitioner's co-delinquent, namely, Shri K. Prakash has also been upheld by the Tribunal.

It is settled law that the evidence produced in the departmental enquiry is not required to be evaluated from the standards of criminal cases and the findings recorded by the enquiry officer or disciplinary authority cannot be upset simply because, on re-appreciation of the evidence, the Court may come to a different conclusion. Moreover, the evidence produced during the enquiry show that the petitioner had admitted his guilt before the complainant, namely, Shri M. Pratap, who was also an employee of the Corporation. The evidence of the passengers to whom fake passes were issued also shows that the

petitioner was a party to the fraudulent act. Therefore, it is not possible to agree with Shri Ashok Anand Kumar that the finding recorded by the Enquiry Officer is not based on any legally admissible evidence.

No other point has been argued.

In the result, the writ petition is dismissed.

G.S.SINGHVI, CJ

4th April, 2007.

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[1] **AIR 1964 SC 477**
[2] **AIR 1970 SC 61**
[3] **JT 1999 (6) SC 507 = (1999) 8 SCC 90**
[4] **(2003) 6 SCC 675**
[5] **AIR 1963 SC 779**
[6] **AIR 1963 SC 1723**
[7] **AIR 1969 SC 966**
[8] **AIR 1965 SC 1103**
[9] **AIR 1975 SC 2151**
[10] **(1995) 6 SCC 749**
[11] **(1999) 1 SCC 759**
[12] **(2003) 12 SC 1**
[13] **AIR 1973 SC 1127 = (1973) 1 SCC 813**
[14] **(2003) 5 SCC 134**
[15] **(2003) 5 SCC 401**
[16] **(2006) 1 SCC 430**
[17] **(2006) 5 SCC 201**